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Supreme Court, U.S.
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No. 97-744
In The

Supreme Court of the United States

October Term, 1997

ANNA HINKEL,

Petitioner,

vs.

CURTIS R. HINKEL, and
PRUDENTIAL INSURANCE COMPANY,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

CURTIS R. HINKEL'S BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

The Petition accurately lists the parties to the proceeding. Prudential Insurance Company was not a party to the issues on appeal to the Eighth Circuit.

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STATEMENT OF THE CASE

The Petition for Writ of Certiorari seeks this Court's review of the 8th Circuit's opinion in ***Prudential Ins. Co. v. Hinkel,*** 121 F.3d. 364 (8th Cir. 1997***).*** The question presented by Petitioner misrepresents the decision made by the 8th Circuit. Petitioner's "question presented" implies that there was some wrongdoing by Respondent, Curtis R. Hinkel, and requests an examination of its "extent". An accurate description of the underlying facts is set forth in the first five sentences of the District Court's decision (Pet. 12a)[1]. Thereafter, the District Court did not make additional findings of fact but rather commented on the legal position and contentions of Respondent, Curtis R. Hinkel.

As set forth herein, there is no cause for this Court to review the "extent of wrongdoing" as there was no wrongdoing to begin with but merely the unfortunate characterization of Mr. Hinkel by the District Judge. These characterizations include:

1. "He can not be perceived as an 'innocent recipient,'" Pet. 19a and 21a;

2. "Granted license to purloin his daughter's inheritance," Pet. 21a;

3. "Would take from his daughter her inheritance to

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[1] The District Court inexplicably ruled in favor of Anna Hinkel although no dispositive motion had been filed by her. A cross-claim filed August 15, 1996 by her (which was after the hearing on August 5, 1996), without leave of court, was rendered "moot" by the District Court's ruling. (Pet. 26a.)

fill his own pockets," Pet. 23a;

4. "Relying on no equity or fairness," Pet. 23a;

5. "Went for greed," Pet. 24a.

THE FACTS

1. Gail E. Hinkel died on August 26, 1995.

2. At the time of Gail E. Hinkel's death she was insured under Group Policy No. G-32000, issued by Prudential Insurance Company of America to the Administrator of Veterans' Affairs for life coverage, in the amount of $200,000.00.

3. Gail E. Hinkel designated Curtis R. Hinkel as the sole principal beneficiary under the terms of such policy on the Serviceman's Group Life Insurance election and certificate, form SGLV-8286.

4. Curtis R. Hinkel made claim to the proceeds of the life insurance policy insuring the life of Gail E. Hinkel.

DISCUSSION

There were no other facts submitted, by affidavit or deposition, that would support the characterizations of Mr. Hinkel by the District Court. The record discloses no wrongdoing by Mr. Hinkel. Petitioner does not identify any wrongdoing at any place in the Petition. [2] As best as can be

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[2] Nothing was identified as wrongdoing by the District Court even

discerned, the "wrongdoing" by Curtis R. Hinkel is that he made a claim to the policy proceeds based on the statutory language of the Servicemen's Group Life Insurance Act, 38 U.S. C. 1965 *et. seq.* (SGLIA) and under the holding of ***Ridgway v. Ridgway,*** 454 U.S. 46, 102 S.Ct. 49, 70 L. Ed. 2d. 39 (1981). How making a claim to the policy proceeds, premised on statutory authority and case law precedent, constitutes wrongdoing, is not explained nor addressed in the Petition.

ARGUMENT

The provisions of a Divorce Decree and related agreement or stipulation do not effect a change of beneficiary of a life insurance policy issued pursuant to the Servicemen's Group Life Insurance Act of 1965. ***Ridgway v. Ridgway, supra.***

Paragraph 1.1 of the Stipulation states that the provisions of the Stipulation are to be approved by the Court. In the absence of the granting of a Decree of Dissolution, the provisions of the Stipulation were to have no force or effect. The Decree entered November 17, 1993, at Paragraph 6, approves the Stipulation and incorporates it as part of the Decree.

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though it stated Donna Ridgway "was, for lack of a better term, an 'innocent recipient' of the life insurance proceeds" (Pet. 19a). Donna Ridgway had no obligations to support her deceased husband's children from a prior marriage who made claims adverse to her. Mr. Hinkel has legal custody of his daughter, Anna Hinkel, and is obligated for her support. Iowa Code Section 597.14. It is unclear why the District Court perceived Donna Ridgway an "innocent recipient" and Curtis R. Hinkel as something other than an "innocent recipient".

Respondent, Curtis R. Hinkel, respectfully contends that the Stipulation and Decree do not nullify, modify, nor reduce the effect of ***Ridgway***. When the arguments of Petitioner are analyzed , they reveal nothing more than a breach of contract claim (state law claim) by Anna Hinkel against her mother's Estate. Anna Hinkel is a third-party beneficiary of the provisions of the Stipulation. The Stipulation and Decree are enforceable under state law. A state divorce decree, like other law governing the economic aspects of domestic relations, must give way to clearly conflicting federal enactments. ***McCarty v. McCarty***, 453 U.S. 210, 101 S.Ct. 2728, 69 L.Ed.2d 589 (1981) which is cited in ***Ridgway*** at 454 U.S. 54-55, 102 S.Ct. 54-55, 70 L.Ed.2d _____ (1981). The clearly conflicting federal enactment is the statutory scheme of the Servicemen's Group Life Insurance Act, 38 U.S.C. §1965-1979.

Gail Hinkel, as the insured service member, possessed the right to freely designate her beneficiary and to alter that choice at any time by communicating the decision in writing to the proper office. She failed to make any change in beneficiary. She possessed the right to change or not change her beneficiary. She had approximately twenty-one (21) months from the date the Divorce Decree was entered until the time of her death to change her beneficiary. She failed to do so. Her intention to change her beneficiary, as presumably expressed in the Divorce Stipulation, was insufficient to effect such change. Gail Hinkel was required to perform some overt act directed to carrying out her intention. As stressed by the Eighth Circuit Court of Appeals in ***Benard v. United States***,

368 F.2d 897, 901 (1966)[3], in addition to her intent, there must be proof that she did, by way of an affirmative act, all that could reasonably have been expected of her under the existing circumstances to effectuate her intention to change her beneficiary. In the present case, there was no "proof" that she performed any affirmative act.

An understanding of ***Ridgway v. Ridgway***, ***supra***, ***Wissner v. Wissner***, 338 U.S. 655, 70 S.Ct. 398, 94 L.Ed. 424 (1950)[4], and ***Yiatchos v. Yiatchos***, 376 U.S. 306, 84 S.Ct. 742, 11 L.Ed.2d 724 (1964) is sufficient for this Court to reject the claims of Petitioner. Her claims are entirely based on the Stipulation and Decree entered in the dissolution proceedings. The arguments being made to support her claim fail to address the concept that Gail Hinkel was unable to contract or give away her right to designate her beneficiary. She could not assign nor convey that right. She was unable to make good on a promise to make a specific person a beneficiary without actually completing the necessary designation form. She could not waive her right to designate the beneficiary. She was unable to accomplish all of the foregoing because of the provisions of the Servicemen's Group Life Insurance Act, 38 U.S.C. §§ 1965-1979.

If Gail Hinkel was unable to contract away her right to designate a beneficiary, or promise to make a particular person her beneficiary, the insurance policy was, accordingly, not

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[3] This decision concerned a United States Government life insurance (USLI) policy issued pursuant to 38 U.S.C. § 740 *et. seq*

[4] This decision concerned a National Service Life Insurance (NSLIA) policy issued pursuant to 38 U.S.C. § 801, *et seq*. The NSLIA was the predecessor to the SCLIA. ***Ridgway v. Ridgway***, 454 U.S. 50, 102 S.Ct. 55, 70 L.Ed.2d ___.

affected by the Stipulation and Decree in the dissolution matter and any claim by Curtis R. Hinkel to the proceeds of the life insurance policy is also not affected by the Stipulation and Decree entered in the dissolution proceedings. Curtis R. Hinkel is the appropriate beneficiary under 38 U.S.C. § 1970. As stated previously herein, "a state divorce decree, like other law governing the economic aspects of domestic relations, must give way to clearly conflicting federal enactments." This "principle is but the necessary consequence of the Supremacy Clause of our National Constitution." ***Ridgway***, 454 U.S. 55, 102 S.Ct. 55, 70 L.Ed.2d ____. The Stipulation signed by Gail Hinkel and Curtis R. Hinkel and the Decree approving the Stipulation have no effect on the precedent established in ***Ridgway***.

There is no distinction to be made when the recipient was a party to the divorce. ***Taylor v. United States,*** 459 F.2d 1007 (9th Cir.), *cert. denied*, 409 U.S. 967, 93 S.Ct. 273, 34 L. Ed. 2d 232 (1972). ***Taylor*** involved an NSLIA life insurance policy in which the ex-wife was determined to be the legal beneficiary of the policy proceeds. The 9th Circuit, in commenting on the divorce documents, said, at 459 F.2d. 1009:

> **If (the ex-wife) relinquished anything concerning the insurance, it was as to any claim against (the ex-husband) but not her claim against the insurer, the United States.**

Respondent, Curtis R. Hinkel, is in the same position. He has not relinquished any claim he has against the issuer of the policy but merely any claims he may have had against Gail Hinkel. Petitioner makes no attempt to fully describe the

status of Curtis R. Hinkel, regarding his claim to the life insurance proceeds, and how his claim to the proceeds constitutes "wrongdoing". There is no authority for Petitioner's arguments. In ***Andrews v. Andrews,*** 97 F.2d 485 (8th Cir. 1938) a divorce did not bar the ex-wife from recovering the proceeds of three life insurance policies. The Court noted that there was nothing in the property settlement contract that showed an intent by the ex-wife to give up any rights that might accrue to her as beneficiary. The interest of the ex-wife was contingent until the time of the death of Mr. Andrews. Up until his death, Mr. Andrews had the right to make a change in the beneficiary in such life insurance policies. At 97 F.2d. 487-88 the Court said:

> **We must assume that he knew that the death benefits in the policies here involved would, unless he changed the name of the beneficiary, go to (ex-wife). With this knowledge, he not only refrained from making any change, but he continued to pay the premiums.**

Petitioner's "wrongdoing" arguments, concerning Curtis R. Hinkel, also overlook other decisions in which "wrongdoing" has, under Petitioner's theory, taken place. In ***McCollum v. Sieben,*** 211 F.2d 708 (8th Cir. 1954) the Circuit Court decided the question of the appropriate beneficiary of an NSLIA policy. At 211 F.2d 712 the Court held that even if the property settlement and divorce proceedings support an inference that the insured intended to change the beneficiary in the policies, it was not enough to comply with the law. Evidence of intention to change beneficiaries without some accompanying affirmative act, "is insufficient to effect a change of beneficiary and the courts cannot act when (the

insured) has not first attempted to act for himself." (Citing ***Bradley v. United States***, 143 F.2d 573, 576 (10th Cir.), *cert. denied*, 323 U.S. 793, 65 S.Ct. 429, 89 L.Ed. 632 (1945).)

In ***Fitzstephens v. United States,*** 189 F.Supp. 919 (D. Wyo. 1960) the Court ruled in favor of the ex-wife on a NSLIA policy where she had been designated beneficiary prior to the divorce. No change had been made in the beneficiary designation. The ruling in her favor was made despite a property settlement agreement stating, in part:

> **4. The following property shall be the sole, separate and absolute property of Donald:**
>
> . . .
>
> **All life insurance on the life Donald and all corporate savings plans heretofore earned by him.**
>
> **7. Each party hereby releases the other from all rights or claims of whatever kind growing out of their marital relationship except as herein provided.**

189 F.Supp. 920.

There is nothing in the decision which would indicate that the claim by the ex-wife was "wrongful" or constituted "wrongdoing". It appears that the ex-wife was treated as a lawful claimant making a claim under a contract of insurance as the principal beneficiary. No fingers were pointed at her with some inference that what she was doing was "wrongful".

The 6th Circuit Court of Appeals, in resolving conflicting claims under an NSLIA policy, ruled in favor of an ex-wife, the designated beneficiary, despite a Michigan law

providing that, upon entry of a divorce decree, "all rights of the wife in and to the proceeds of any policy or contract of life insurance, . . . upon the life of the husband in which she was named or designated as beneficiary, ... during the marriage . . . shall thereupon become and be payable to the estate of the husband". ***United States v. Donall,*** 466 F.2d. 1246, 1247. fn2 (6th Cir. 1972). Also, a Divorce Decree had been entered, which provided:

> **It is further ordered, adjudged and decreed, that all rights of either party in and to the proceeds of any policy or contract of life insurance . . . upon the life of the other party, in which he or she was named or designated as beneficiary, ... are hereby cut off and at an end. 466 F.2d. 1247, fn3.**

No mention was made that the claim of the ex-wife was somehow "wrongful". Again, it appears that her claim was based on the fact that she was the lawful beneficiary of a life insurance policy. The ex-wife was the principal beneficiary and the deceased's mother was the contingent beneficiary. The mother claimed the proceeds on the basis of the Michigan law and on the basis of the Divorce Decree. No claims where made that the ex-wife was a "wrongdoer".

Petitioner argues, in the "Conclusion" (Pet. 10) that Curtis R. Hinkel fits the definition of a "wrongdoer". The Petition makes reference to the ***Ridgway v. Ridgway, supra,*** and specifically footnotes 9 and 12.

Footnote 9 concerns the decision in ***Shoemaker v. Shoemaker,*** 263 F.2d. 931 (6th Cir. 1959) in which the beneficiary murdered the insured service member. Footnote

12 refers to "wrongdoing by the named beneficiary". As stated previously herein, there has been no "wrongdoing" by Curtis R. Hinkel. He has made a valid claim, as the primary designated beneficiary, to the proceeds of the life insurance policy insuring the life of Gail E. Hinkel. His signature on the appropriate claim form (Form No. SGLV B 8286), does not constitute "wrongdoing". By signing his name he can not be perceived to have done any "wrong" such as the beneficiary did in ***Shoemaker.***

REASONS FOR DENYING THE WRIT

The Petition requests review of the "extent of wrongdoing" by a named beneficiary under an SGLIA Policy. The difficulty with this is that there has been no wrongdoing that Petitioner can point to. The Petition is a veiled attempt to have Anna Hinkel's state law Breach of Contract Claim recognized. The claims of "wrongdoing" have no support in the record. Moreover, the 8th Circuit Court of Appeals found that there was "no genuine issue of material fact" and that Curtis R. Hinkel was entitled to judgement as a matter of law. (Pet. 10a.) Further, the issue of the appropriate beneficiary under an SGLIA Policy of life insurance has been definitively answered in ***Ridgway v. Ridgway, supra***. The decision by the 8th Circuit was a correct application of settled law, and no conflict among the Circuits is even suggested.

In addition, the claim of the Petitioner, based on the findings of the District Judge, is meritless to the extent that it is based on the District Judge's characterizations rather than factual findings. There is absolutely no way to change a beneficiary under an SGLIA Policy unless the change has been made in writing and made to the proper office. Such change

was never accomplished by Gail E. Hinkel. To allow a change, as now urged by Petitioner, would be contrary to the statutory scheme and regulations now in place and recognized in ***Ridgway v. Ridgway, supra,*** and followed by the 8th Circuit of Appeals in ***Prudential Ins. Co. v. Hinkel, supra***.

CONCLUSION

Petitioner has failed to establish any factual basis for "wrongdoing" or "wrongful" act by Respondent, Curtis R. Hinkel. The characterizations of Mr. Hinkel by the District Judge are unfounded. The issue in this matter is definitively resolved by this Court's decision in ***Ridgway v. Ridgway, supra.***. No reasons are present in this case to overturn or distinguish ***Ridgway.*** This case is absolutely controlled by ***Ridgway*** in that the insured, Gail E. Hinkel, at all times possessed the right freely, without being bound by any contractual obligations whatsoever (be they divorce-related or otherwise), to designate the beneficiary of her SGLIA Policy and to alter that choice at any time by communicating the decision in writing to the proper office. 454 U.S. 56, 102 S.Ct. 55, 70 L. Ed. 2d. _____. The converse is also true in that she had the right to not alter her choice if she so desired despite any divorce-related documents in which she agreed otherwise.

The 8th Circuit decision in ***Prudential Ins. Co. v. Hinkel, supra,*** is not in conflict with the decision of another United States Court of Appeals. The decision does not conflict with a decision by a State Court of last resort. The decision does not depart from the accepted and usual course of Judicial proceedings. Further, the decision of the 8th Circuit of Appeals concerns an issue that has been previously settled by

this Court and does not, in any manner whatsoever, conflict with any relevant decisions of this Court.

The Petition should be denied for all of the reasons set forth in this Brief in Opposition.

DATED: November 26, 1997.
Respectfully submitted,

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